

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**Director of the Manufactured Housing  
and Modular Units Program of the  
Public Service Commission,** )  
)  
)

**Complainant,** )

**Case No. MC-2004-0078**

**v.** )

**A & G Commercial Trucking, Inc.,** )

**Respondent.** )

**COMPLAINANT'S SUGGESTIONS  
IN SUPPORT OF STIPULATION AND AGREEMENT**

**COMES NOW** the Complainant, Director of the Manufactured Housing and Modular Units Program of the Public Service Commission ("Director") and, for his Suggestions in Support of Stipulation and Agreement, states to the Missouri Public Service Commission as follows:

**PROCEDURAL BACKGROUND**

The Director filed a Complaint against Respondent A & G Commercial Trucking, Inc. on August 5, 2003, alleging that: in 2002 and 2003, Respondent A & G owned four specific manufactured homes; A & G offered the said homes for sale at retail; and A & G was not registered with the Public Service Commission as a manufactured home dealer, as required by law. The Director further alleged that his agent placed restrictive sale notices (known as "red tags") on each of the said four homes and that the Director informed Greg DeLine, the owner of A & G, that the red tags were not to be removed, and that the homes were not to be sold, unless authorized by the Director. The Director further alleged that all four red tags were removed, that

two of the homes were sold, and that those two homes did not comply with the code and did not bear the proper seal, as required by law. The Director requested that the Commission find that Amega had violated the provisions of §§ 700.015, 700.090, and 700.045, RSMo<sup>1</sup>, and that the Commission authorize the Director to seek civil penalties from A & G in circuit court, pursuant to § 700.115.

The parties submitted the case to mediation and eventually executed a Stipulation and Agreement, which they filed with the Commission on March 19, 2004. This Stipulation and Agreement required, among other things, that A & G register with the Commission and qualify as a dealer of manufactured homes. The Commission rejected the Stipulation and Agreement on May 25, 2004, stating that “it would not be appropriate to approve a settlement, which encourages A & G to function as a dealer of manufactured homes.”

The Commission had already set the case for an evidentiary hearing, to be held on June 1, 2004. However, A & G sought and obtained from the Cole County Circuit Court a writ of prohibition, to prohibit the Commission from conducting the evidentiary hearing. The writ of prohibition was appealed to the Missouri Supreme Court, and after remand the circuit court dismissed the petition for writ of prohibition. Jurisdiction of the case then returned to the Commission.

The Director and A&G executed a Stipulation and Agreement (“the Agreement”), to resolve all issues in this case, on September 29, 2006, and filed it with the Commission the same day.

### **THE AGREEMENT**

The Agreement includes four main elements, which address:

- repairs and the correction of defects in seven homes that A & G sold;

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<sup>1</sup> Unless otherwise indicated, all statutory references are to RSMo 2000, as currently supplemented.

- the recertification, prior to sale, of any homes that A & G may now or hereafter own;
- an agreement by A & G not to seek registration with the Commission as a manufactured home dealer; and
- the payment of a civil penalty, in the amount of \$14,000.

The Agreement requires A & G to take corrective action to remedy any defects that exist in the four manufactured homes that the Director identified in the Complaint that he filed in this case, and also any defects that remain in three other homes that A & G sold.<sup>2</sup> It provides that the Director will send letters to each of these seven customers, to request permission to inspect their homes for defects. If the customers consent, the Director will inspect the homes, and will identify actions that A & G must take to bring the homes into compliance with the HUD code. A & G will take corrective action as required, and the Director will then reinspect the homes and issue a HUD label, if appropriate. A & G will reimburse the Director for the cost of the inspections.

The Agreement also provides that if A & G ever desires to sell any new or used manufactured home for the purpose of habitation, it must first notify the Director of its desire to do so.<sup>3</sup> The Director may then inspect the home and identify any corrective action that is needed to bring the home into compliance with the HUD code. A & G may not sell any such home at retail unless and until it takes any needed corrective action. After A & G takes the required corrective action, the Director will reinspect the home and issue a HUD label, if appropriate. A & G will reimburse the Director for the cost of the inspections.

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<sup>2</sup> See Paragraph 6 of the Agreement.

<sup>3</sup> See Paragraph 5 of the Agreement.

A & G also agreed that, so long as Greg DeLine owns an interest in A & G, it will not act as a dealer of manufactured homes, and will not seek registration as a dealer of manufactured homes pursuant to Chapter 700.<sup>4</sup>

The Agreement requires A & G to pay a civil penalty in the amount of \$14,000.<sup>5</sup> Section 700.115.2 authorizes civil penalties for violations of Chapter 700, but limits the amount of the penalties that the circuit court may impose to \$1,000 for each such violation.

### **SUPPORT FOR AGREEMENT**

The Director requests that the Commission approve the Agreement, for the reasons set forth in the following paragraphs.

Significant Punishment. In his Complaint, the Director asked the Commission for authority to seek civil penalties from A & G pursuant to § 700.115.2. Except for a request that the Commission find that A & G had violated various provisions of Chapter 700, this was the only relief that the Director sought in his Complaint.

In his Complaint, the Director alleged that A & G had violated the provisions of the Manufactured Housing Law with respect to four homes that it had once owned. Those were the only homes covered by the Complaint, because they were the only ones that the Director knew about, and that were ripe for litigation, at the time the Complaint was filed. However, after the Director filed his Complaint, he obtained information about three other homes, which are described in Paragraph 1.f of the Agreement. Those seven homes are collectively referred to in the Agreement (and herein) as the “Disputed Homes.”

Section 700.115 authorizes the circuit court to impose penalties of up to \$1,000 for each violation of Chapter 700. In the Agreement, A & G has agreed to pay a civil penalty in the

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<sup>4</sup> See Paragraph 3 of the Agreement.

<sup>5</sup> See Paragraph 7 of the Agreement.

amount of \$14,000, which results in penalties averaging \$2,000 for each of the Disputed Homes. This is a substantial penalty, which will serve as a deterrent to future misconduct by A & G or by others who are similarly situated. Even though the penalty per home exceeds the amount mentioned in § 700.115, the Director believes that a circuit court would be authorized to impose this penalty if it found that A & G had committed more than one violation per home.

*Remedies for Owners of the Disputed Homes.* The Director's principal objective in negotiating this Agreement was to ensure that the Disputed Homes that A & G sold comply with the HUD code and other regulatory standards and that the homes are safe and suitable for habitation. The Agreement gives the owners of these homes the opportunity to receive such assurances and to remedy any existing defects in their homes, at no cost to the homeowner.

To the best knowledge of the Director, none of the homeowners has initiated a lawsuit in connection with their purchase of a Disputed Home, although one of the homeowners (the Ridnours) did initiate a complaint about their home with the Director. However, to date the Director has not identified any construction defects in any of the Disputed Homes, in part because he has not had an adequate opportunity to inspect them. Accordingly, the Agreement provides a mechanism to have the Director contact the owners of the Disputed Homes, to find out whether they want inspections.

If the homeowners do not consent to have further repair work done on their manufactured home, the Agreement imposes no further obligations upon A & G. But if the homeowners desire an inspection, the Director or a third party will inspect the home and identify the corrective action that is needed to bring the home into compliance with the HUD code. A & G must then take the corrective action within a reasonable period of time. The Director will then reinspect the home and issue a HUD label for the home, if appropriate.

Under the Agreement, A & G must bear all costs of inspection and of any necessary corrective work. The homeowners will therefore be “made whole” for any defects that existed in the manufactured home that they purchased from A & G, thereby achieving the Director’s principal objective in this case.

*Deterring Future Misconduct.* Under the Agreement, A & G would not be permitted to register with the Commission as a manufactured housing dealer. Nonetheless, it is still possible that A & G might, in the future, sell new or used manufactured homes. Under current law, A & G would be permitted to sell used manufactured homes without registering as a dealer, and would be able to sell up to three new manufactured homes without registering as a dealer. The Agreement therefore prescribes a process that A & G must follow with respect to any homes that it sells to consumers at retail.

A & G would have to first notify the Director of its plan to sell a home to a consumer. The Director or a third party would then inspect the home and identify the corrective action that is needed to bring the home into compliance with the HUD code. A & G would then have to take any necessary corrective action within a reasonable period of time. Finally, the Director would reinspect the home and issue a HUD label for the home, if appropriate.

These provisions provide a strong deterrent to prevent A & G and its affiliates from selling manufactured homes that do not comply with the code. Although these provisions would essentially require A & G to do what it is already required by law to do, they would enhance the Director’s ability to oversee the sales activity of A & G, and they would help to ensure that A & G does not sell defective homes to its customers.

Fault / Wrongdoing. The Agreement provides, in two places, that neither A & G nor Mr. DeLine admits any liability to another party nor to any third party. This agreement first appears in paragraph 2.d of the Agreement, and then, in more detail, in Paragraph 10 of the Agreement.

Although A & G does not admit liability to anyone, it does admit, in Paragraph 9, that it violated three provisions of the Manufactured Housing Law, specifically §§ 700.015, 700.090, and 700.045. The Director regards this acknowledgment as important, because the Commission has not yet had an opportunity, in this case, to determine whether A & G had violated any of these statutes. It is noteworthy that, except for the imposition of a civil penalty (discussed above), this acknowledgment is the only relief that the Director sought in this case.

### **CONCLUSION**

The Agreement is a reasonable settlement of the dispute between the parties in this case. It grants the Director all of the relief that he requested – a substantial civil penalty and an acknowledgment that A & G has violated the Manufactured Housing Law – thereby achieving the Director's objectives without the risk and expense of additional litigation.

The agreed-upon \$14,000 penalty is probably more than the Commission would be able to obtain by invoking the provisions of § 700.115 in a circuit court penalty proceeding, and will be obtained without the delay that would result from a circuit court action and a possible appeal.

Most importantly, the Agreement protects the consumers, by requiring A & G to take all corrective actions that are required in order to bring the seven Disputed Homes into compliance with the HUD code, all at no cost to the consumer. And it provides protection to any consumer that might consider buying any new or used manufactured home from A & G, by ensuring that such homes will comply with the HUD code.

Implementation of the Agreement is in the public interest, and the Commission should approve it.

**WHEREFORE**, Complainant requests that the Commission approve the Stipulation and Agreement and order the parties to comply with the terms thereof.

Respectfully submitted,

/s/ Keith R. Krueger

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 2nd day of October, 2006.

/s/ Keith R. Krueger